

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA)	
)	
v.)	No. 1:15-CR-57-01-LM
)	
MUSTAFA HASSAN ARIF)	
)	

DEFENDANT'S MOTION TO DELAY START OF TRIAL BY TWO DAYS

Robin D. Melone and Kristen B. Wilson, counsel for Mustafa Arif, respectfully request that the Honorable Court delay the start of his bench trial until Wednesday, August 31, 2016.

In support the following is offered:

1. Mr. Arif is charged with one count of wire fraud and four counts of drug misbranding.
2. Mr. Arif was arrested on February 7, 2014. He has been detained since his arrest.
3. The government filed a superseding indictment on September 9, 2015.
4. Undersigned counsel are Mr. Arif's fourth set of attorneys and entered appearances on his behalf in February of 2016.
5. Trial in this matter is scheduled to start on Monday, August 29, 2016.
6. At approximately 7:22 PM Monday evening (August 22) the government electronically filed its response to the Defendant's Motion to Dismiss For

Insufficient Indictment. Their response was to strike the language in the indictment requiring them to prove the drugs at issue are prescription.

7. Parties appeared for a pretrial conference on Tuesday, August 23, 2016.
8. During the pretrial conference the government sought leave to provide the Defense with transcripts of Agent Furtado's grand jury testimony. The government also stated that it had asked Agent Furtado to compile every email he has sent or received about this investigation, which started 6 years ago in 2010. Having received and started reviewing the emails, they are voluminous and not insignificant. Furthermore, many of the emails reference attachments, some of which are not viewable but could be significant.
9. As stated at the pre-trial conference, the amended indictment forced the defense to recalculate strategy on a number of levels. Counsel first discussed this change with the Defendant immediately before the hearing on the Motion (Tuesday morning) which was followed by lengthy conversation following the pretrial conference.
10. Counsel feels ethically uncomfortable proceeding to trial having not read full discovery. While the government represents that it has disclosed this information, "out of an abundance of caution," it is still discovery. While it may produce nothing of substance or value to the defense, there remains an obligation under the NH Rules of Professional Conduct and the U.S. and N.H. Constitutions to provide effective representation. It is

difficult to say that effective representation can occur when discovery has not been fully reviewed in advance of trial.

11. This information was disclosed 6 days before trial in conjunction with a not insignificant change to the indictment. Counsel has continued to work diligently to meet the Court's deadlines and review this volume of new information, all while communicating with the Defendant and preparing for trial.
12. While Counsel very much wish it was practical to put on hold all other cases to work solely on Mr. Arif's case for the week before trial, that is not a practical reality for two solo practitioners with significant felony caseloads. Both Attorneys Melone and Wilson have had numerous court appearances around the state this each day this past week, relegating all other hours (and significant evening and nighttime hours) to work on Mr. Arif's case. Simply stated, there are only so many hours in a day.
13. This request is not made lightly, as the Defense is cognizant of the inconvenience this request poses for the government and its witnesses. Specifically, Counsel is aware that a number of witnesses are scheduled to fly in on Monday, August 29. The government originally estimated this trial to last between one and two weeks. With the stipulations reached it is now anticipated to last three to four days. The request is for a minimal delay and only what counsel feel is necessary to comply with their ethical obligations.
14. It is presume the government objects to this request.

WHEREFORE, it is respectfully requested that the Honorable Court issue an order:

- A) Granting this request to delay the start of the Defendant's trial until August 31, 2016; OR
- B) That this Motion will be addressed during the August 26 telephonic conference; AND
- C) Granting any other relief deemed just and proper.

Respectfully Submitted,

Mustafa Arif, through Counsel

/s/ Robin D. Melone
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CERTIFICATE OF SERVICE

I, Robin D. Melone, hereby attest that a true copy of the foregoing has been e-filed and copied to AUSA Arnold Huftalen and Attorney Sarah Hawkins on this the 25th day of August, 2016.

/s/Robin D. Melone, Esq.
Robin D. Melone